

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
v.)	
)	Civ. No. 04-11136-GAO
DIRECT MARKETING CONCEPTS, INC., et al.,)	
)	
Defendants.)	
)	

**PLAINTIFF FEDERAL TRADE COMMISSION'S MOTION FOR A MODIFICATION
OF THE JUNE 23, 2004 PRELIMINARY INJUNCTION AS TO DEFENDANTS DIRECT
MARKETING CONCEPTS, INC., ITV DIRECT, INC., AND DONALD W. BARRETT
AND REQUEST FOR EXPEDITED TREATMENT**

Plaintiff Federal Trade Commission ("Commission") respectfully moves this Court for a modification of the Court's June 23, 2004 Preliminary Injunction as to Defendants Direct Marketing Concepts, Inc., ITV Direct, Inc., and Donald W. Barrett ("Preliminary Injunction"). As described in the memorandum accompanying this motion, the unlawful actions of Defendants Direct Marketing Concepts, Inc. ("DMC"), ITV Direct, Inc. ("ITV"), and Donald W. Barrett ("Barrett") ("Defendants") are likely to injure consumers each day they continue unabated. The Commission therefore respectfully asks the Court to hear its motion on an expedited basis and modify the Preliminary Injunction by appointing a receiver over DMC and ITV.

Since the entry of the Preliminary Injunction, Defendants have continued to engage in fraudulent practices, including breaching their commitment to this Court that they would no longer run infomercials for ingestible products. Specifically, the Commission alleges that Defendants continue to run infomercials that make deceptive health and disease claims. The two infomercials the Commission challenges directly in this motion were the 26th and 39th most frequently aired infomercials in the month of April, 2005, underscoring the extent to which

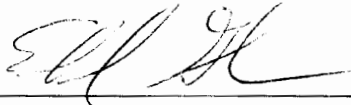
Defendants are disseminating these deceptive claims to consumers and the considerable resources Defendants are expending in doing so. Additionally, Defendants continue to air infomercials that use a deceptive “talk-show” format that misleads consumers about the commercial nature of the program, have failed to ensure that their sales force provides consumers with detailed information about Defendants’ continuity programs as required by the Preliminary Injunction, and are allowing distributors to establish websites making disease claims for their products.

The proposed Modified Preliminary Injunction Order would not replace the Preliminary Injunction, but would supplement it by appointing a receiver for defendants DMC and ITV. As discussed herein, the Commission believes that the current management of DMC and ITV is either unwilling or incapable of resisting the urge to make unsubstantiated health and disease claims for the products they sell and engage in other deceptive practices.

The FTC provided notice of this motion to Defendants in an effort to have Defendants voluntarily submit to a receiver over DMC and ITV. Defendants have not agreed to the proposed modification of the Preliminary Injunction, thus necessitating the filing of this motion and the Commission’s request for expedited treatment due to the large ongoing consumer injury. Accompanying this motion, and filed herewith, are a supporting memorandum, declarations and exhibits in support thereof, a memorandum regarding the Commission’s proposed receiver, and a proposed Modified Preliminary Injunction Order including findings of fact and conclusions of law.

REQUEST FOR ORAL ARGUMENT

The Commission respectfully requests oral argument on its request for a modification of the Preliminary Injunction.



DANIEL KAUFMAN
KIAL S. YOUNG (BBO # 633515)
EDWARD GLENNON
Federal Trade Commission
600 Pennsylvania Avenue, NW; Suite NJ-3212
Washington, DC 20580
(202) 326-2675, -3126 (voice); (202) 326-3259 (fax)
dkaufman@ftc.gov or eglennon@ftc.gov

ATTORNEYS FOR PLAINTIFF

DATE: May 25, 2005